(24,607)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 389.

WILLIAM P. CROSS, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 23, 1915.

1 I. *Petition. Filed July 7, 1913.*

United States Court of Claims.

No. 32546.

WILLIAM P. CROSS
vs.
UNITED STATES.

Petition.

To the Honorable the Chief Justices and Judges of the United States Court of Claims:

Your petitioner, William P. Cross, a citizen of the United States, residing at Providence, in the State of Rhode Island, respectfully represents:

I.

That from July 1, 1907, to October 1, 1912, he was clerk of the United States Circuit and District Courts for the District of Rhode Island, duly appointed, qualified and acting.

II.

That during said period petitioner as such clerk performed services for and in behalf of the United States and his accounts for fees thus earned, duly verified by his oath and approved by the Court as required by the Act approved February 22, 1895, were pre-
2 sented through the Department of Justice to and were finally acted on by the Accounting Officers of the Treasury Department and said accounts were in part allowed and paid, but a part thereof were disallowed and payment thereof was refused and has not been paid, amounting to $4,059.50.

III.

The items disallowed are as follows:

Quarter ending September 30, 1907:

Making by direction of the Department of Commerce and Labor, triplicate original Declarations of Intention for Naturalization:

3 folios each 30c.; seal 20c.; 238 at 50c..... $119.00

Quarter ending December 31, 1907:
Making by direction of the Department of Commerce and Labor, triplicate original Declarations of Intention for Naturalization:
3 folios each 30c.; seal 20c.; 301 at 50c..... 150.50

Quarter ending March 31, 1908:
Making by direction of the Department of Commerce and Labor, triplicate original Declarations of Intention for Naturalization, as follows:
3 folios each 30c.; seal 20c.; 399 at 50c..... 199.50

Quarter ending June 30, 1908:
Making by direction of the Department of Commerce and Labor, triplicate original Declarations of Intention for Naturalization:
3 folios each 30c.; seal 20c.; 445 at 50c..... 222.50

Quarter ending September 30, 1908:
Making by direction of the Department of Commerce and Labor, triplicate original Declarations of Intention for Naturalization, as follows:
3 folios each 30c.; seal 20c.; 225 at 50c..... 117.50

3 Quarter ending December 31, 1908:
Making by direction of the Department of Commerce and Labor, triplicate original Declarations of Intention for Naturalization, as follows:
3 folios each 30c.; seal 20c.; 253 at 50c..... 126.50

Quarter ending March 31, 1909:
Making by direction of the Department of Commerce and Labor, triplicate original Declarations of Intention for Naturalization, as follows:
287 at 50c. 143.50

Quarter ending June 30, 1909:
Making by direction of the Department of Commerce and Labor, triplicate original Declarations of Intention for Naturalization, as follows:
3 folios each 30c.; seal 20c.; 436 at 50c..... 218.00

Quarter ending September 30th, 1909:
Making by direction of the Department of Commerce and Labor, triplicate original Declarations of Intention for Naturalization, as follows:
3 folios each 30c.; seal 20c.; 334 at 50c..... 167.00

Quarter ending December 31, 1909:
Making by direction of the Department of Commerce and Labor, triplicate original Declarations of Intention for Naturalization, as follows:
3 folios each 30c.; seal 20c..... 227.50

Quarter ending March 31, 1910:
Making by direction of the Department of Commerce and Labor, triplicate original Declarations of Intention for Naturalization, as follows:
3 folios each 30c.; seal 20c..... 180.50

Quarter ending June 30, 1910:
Making by direction of the Department of Commerce and Labor, triplicate original Declarations of Intention for Naturalization, as follows:
4 3 folios each 30c.; seal 20c.; 544 at 50c..... 272.50

Quarter ending September 30, 1910:
Making by direction of the Department of Commerce and Labor, triplicate original Declarations of Intention for Naturalization, as follows:
3 folios each 30c.; seal 20c.; 314 at 50c..... 157.00

Quarter ending December 31, 1910:
Making by direction of the Department of Commerce and Labor, triplicate original Declarations of Intention for Naturalization, as follows:
3 folios each 30c.; seal 20c.; 444 at 50c..... 222.00

Quarter ending March 31, 1911:
Making by direction of the Department of Commerce and Labor, triplicate original Declarations of Intention for Naturalization, as follows:
3 folios each 30c.; seal 20c.; 387 at 50c..... 193.50

Quarter ending June 30, 1911:
Making by direction of the Department of Commerce and Labor, triplicate original Declarations of Intention for Naturalization, as follows:
3 folios each 30c.; seal 20c.; 587 at 50c..... 293.50

Quarter ending September 30, 1911:
Making by direction of the Department of Commerce and Labor, triplicate original Declarations of Intention for Naturalization, as follows:
3 folios each 30c.; seal 20c.; 373 at 50c..... 186.50

Quarter ending December 31, 1911:
Making by direction of the Department of Commerce and Labor, triplicate original Declarations of Intention for Naturalization, as follows:
3 folios each 30c.; seal 20c.; 528 at 50c..... 264.00

5 Quarter ending March 31, 1912:
Making by direction of the Department of Commerce and Labor, triplicate original Declarations of Intention for Naturalization, as follows:
3 folios each 30c.; seal 20c.; 426 at 50c..... 213.00

Quarter ending June 30, 1912:
Making by direction of the Department of Commerce and Labor, triplicate original Declarations of Intention for Naturalization, as follows:
3 folios each 30c.; seal 20c.; 429 at 50c..... 214.50

Quarter ending September 30, 1912:
Making by direction of the Department of Commerce and Labor, triplicate original Declarations of Intention for Naturalization, as follows:
3 folios each 30c.; seal 20c.; 344 at 50c..... 172.00

$4,059.50

IV.

No action than as aforesaid has been had on this claim in the Courts or by any Department of the Government. The petitioner is the sole owner of this claim, and the only person interested therein, and no assignment or transfer thereof, or any part or interest therein, has been made.

The petitioner is justly entitled to the amount herein claimed from the United States, after allowing all just credits and set-offs, and he believes the facts as stated in his petition to be true.

Wherefore, your petitioner prays judgment against the United States in the sum of $4,059.50.

WILLIAM P. CROSS,
Petitioner.

6 *Clerk's Certificate.*

STATE OF RHODE ISLAND,
County of Providence, ss:

Before me, Thomas Hope, Deputy Clerk of the United States District Court, District of Rhode Island, personally appeared William P. Cross, who being duly sworn, deposes and says that he is the petitioner named in the foregoing petition; that he has read the same,

and that the facts therein stated are true to the best of his knowledge and belief.

WILLIAM P. CROSS.

Subscribed and sworn to before me this 19th day of June, A. D. 1913.

THOMAS HOPE,
Deputy Clerk United States District Court,
District of Rhode Island.

FRANK B. CROSTHWAITE,
Attorney for Petitioner.

7 II. *Traverse. Filed February* 10, 1915.

In the Court of Claims of the United States, December Term, A. D. 1914.

No. 32546.

WILLIAM P. CROSS
vs.
THE UNITED STATES.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

HUSTON THOMPSON,
Assistant Attorney General.
J. R. W.

8 III. *Submission of Case.*

On February 10, 1915, this case was submitted without argument by Mr. F. B. Crosthwaite, for claimant, and Mr. Horace S. Whitman, for defendants.

9 IV. *Findings of Fact and Conclusion of Law. Filed February 15, 1915.*

Court of Claims of the United States.

No. 32546.

WILLIAM P. CROSS
v.
THE UNITED STATES.

This case having been heard by the Court of Claims the court, upon the evidence, makes the following

Findings of Fact.

I.

The claimant, William P. Cross, was clerk of the United States District Court for the District of Rhode Island, from July 1, 1907, to October 1, 1912.

II.

During said period his accounts for fees earned in his official capacity were verified by his oath, approved by the Court as required by the Act approved February 22, 1875, and finally acted upon by the Accounting Officers of the Treasury Department, and part of the same were allowed and paid, but part thereof as more
10 specifically set forth in Finding III, were disallowed and no part of the same have been paid.

III.

The items disallowed were as follows:

For making by the direction of the Department of Commerce and Labor, triplicate copies of original declarations of intention for naturalization, 8,110 declarations at 3 folios each, 24,330 folios, at 10 cents each.....	$2,433.00
For attaching seal as required by the Department of Commerce and Labor to each of 8,110 declarations at 20 cents each	1,622.00
Total.....	$4,055.00

IV.

The claimant prepared three copies of the declarations of intention of aliens to become citizens of the United States in each of 8,110 cases, each copy having been signed by the declarant and the

jurat to each copy was signed by the claimant. One copy is retained on file in the office of the clerk of the United States District Court, another copy is delivered to the declarant and the third copy is forwarded to the Bureau of Immigration and Naturalization under
Rule 22 of the Regulations of the Department of Commerce
11 and Labor, said rule being authorized by Section 12 of the Naturalization Law.

V.

The claimant collected one dollar ($1.00) from each declarant, "for receiving and filing a declaration of intention and issuing a dpplicate thereof," one-half of which was paid over to the Bureau of Immigration and Naturalization in accounts rendered quarterly, as provided by Section 13 of the Naturalization Law.

VI.

The claimant presented in his regular accounts for fees earned as clerk of the United States Court, a charge of ten cents (10 cents) per folio for three folios for each declaration and a charge of twenty cents for seal in each case, aggregating four thousand and fifty-five dollars ($4,055), for making the copies which were forwarded to the Bureau of Immigration and Naturalization, and all of said charges have been disallowed by the Accounting Officers of the Treasury Department.

The claimant has received no compensation from any source for said copies of declarations.

VII.

12 The fees claimed in this case are for services performed between July 1, 1907, and October 1, 1912, and the allowance of said fees will not increase the maximum allowed by law to him for any portion of that period.

Conclusion of Law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant is not entitled to recover, and his petition is therefore dismissed.

13 V. *Judgment of the Court.*

At a Court of Claims held in the City of Washington on the 15th day of February, 1915, judgment was ordered to be entered — follows:

The Court on due consideration of the premises, find for the defendants and do order, adjudge and decree, that the petition of William P. Cross, claimant, be and the same is hereby dismissed.

BY THE COURT.

14 VI. *Application for and Allowance of Appeal.*

From the judgment rendered in the above-entitled cause on the fifteenth day of February, 1915, in favor of the defendant, the claimant, by his attorney, on the 18th day of February, 1915, makes application for, and gives notice of an appeal to the Supreme Court of the United States.

F. B. CROSTHWAITE,
Attorney for Claimant.

Filed February 18, 1915.

Ordered: That the above appeal be allowed as prayed for.

BY THE COURT.

February 18, 1915.

15 Court of Claims.

No. 32546.

WILLIAM P. CROSS
vs.
THE UNITED STATES.

I, John Randolph, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of pleadings in the above-entitled cause; of the submission of case; of the findings of fact, and conclusion of law; of the judgment of the Court dismissing petition of claimant; of the claimant's application for, and allowance of, an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court this 20" day of February, A. D. 1915.

[Seal Court of Claims.]

JOHN RANDOLPH,
Assistant Clerk, Court of Claims.

Endorsed on cover: File No. 24,607. Court of Claims. Term No. 389. William P. Cross, appellant, vs. The United States. Filed March 8th, 1915. File No. 24,607.

Supreme Court of the United States

OCTOBER TERM, 1915.

No. [redacted] 78

WILLIAM P. GROSS, *Appellant*,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLANT

FRANK B. CROSSWAITH,
Attorney for Appellant.

E. P. CELLADAY,
Of Counsel.

Rapid Printing Company, Denver

IN THE

Supreme Court of the United States

OCTOBER TERM, 1915.

No. 389.

WILLIAM P. CROSS, *Appellant,*

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLANT.

The appellant, William P. Cross, clerk of the United States District Court for the district of Rhode Island, sued the United States to recover fees alleged to be due him for services performed in his official capacity. In his petition, the petitioner alleged the facts substantially as found by the court below, to which facts no objections were raised by counsel for the defendant. Upon said facts, and upon the proofs submitted, the Court of Claims found the pertinent facts as follows:

I

That the petitioner, William P. Cross, was clerk of the United States Circuit and District Courts for the district of Rhode Island from July 1, 1907, to October 1, 1912.

II

That during said period the petitioner, as such clerk, performed services for and in behalf of the United States,

and his accounts for fees thus earned, duly verified by his oath, and approved by the court as required by the act approved February 22, 1875, were presented through the Department of Justice to, and were finally acted upon by, the accounting officers of the Treasury Department, and said accounts were in part allowed and paid, but a part thereof was disallowed and payment therefor was refused.

III

The items disallowed were as follows:

For making, by direction of the Department of Commerce and Labor, triplicate copies of the original declarations of intention for naturalization, 8,110 declarations of 3 folios each, 24,330 folios, at 10c per folio	$2,433 00
For attaching seal as required by the Department of Commerce and Labor to each of 8,110 declarations, at 20c	1,622 00
	$4,055 00

IV

The claimant prepared three copies of the declarations of intention of aliens to become citizens of the United States in each of 8,110 cases, each copy having been signed by the declarant, and the jurat to each copy was signed by the claimant; one copy retained on file in the office of the clerk of the United States District Court, another copy delivered to the declarant, and the third copy forwarded to the Bureau of Immigration and Naturalization, under Rule 22 of the Regulations of the De-

partment of Commerce and Labor, said rule being authorized by Section 12 of the Naturalization Law.

V

The claimant collected one dollar ($1.00) from each declarant "for receiving and filing a declaration of intention and issuing a duplicate thereof," one-half of which was paid over to the Bureau of Immigration and Naturalization in accounts rendered quarterly, as provided by Section 13 of the Naturalization Law.

VI

The claimant presented in his accounts for fees earned as clerk of the United States Court, a charge of ten cents per folio for three folios for each declaration, and a charge of twenty cents for seal for each declaration, for making the copies which were forwarded to the Bureau of Immigration and Naturalization, all of which charges were disallowed by the accounting officers of the Treasury Department.

The claimant has received no compensation from any source for said copies of declarations of intention.

VII

The allowance of said fees will not increase the maximum compensation allowed by law to him for any portion of the period from July 1, 1907, to October 1, 1912.

Upon such statement of facts, the Court of Claims concluded, as a matter of law, that the claimant is not entitled to recover, and that his petition should therefore be dismissed.

And upon order of the court the petition was dismissed.

ASSIGNMENT OF ERRORS

The Court of Claims erred in holding—

1. That as a conclusion of law the plaintiff was not entitled to recover.
2. That the petition be dismissed.

FOR MAKING COPY OF DECLARATION OF INTENTION.
FOR AFFIXING SEAL THERETO.

The only question to be determined in this case is, whether or not the appellant is entitled to a fee of ten cents per folio for making a copy of a "declaration of intention" of an alien to become a citizen of the United States, and a fee of twenty cents for the seal attached thereto.

The law applicable to this case is found in the act approved June 29, 1906 (34 Stat. at Large, p. 596, Secs. 12, 13 and 21.)

Sec. 12 provides as follows:

> "That it is hereby made the duty of the clerk of each and every court exercising jurisdiction in naturalization matters, under the provisions of this act, to keep and file a duplicate of each declaration of intention made before him, and to send to the Bureau of Naturalization at Washington, within thirty days after the issuance of a certificate of citizenship, a duplicate of such certificate, and to make and keep on file in his office a stub for each certificate so issued by him,

> whereon shall be entered a memorandum of all the essential facts set forth in such certificate * * *."

That section of the law requires the clerk to send to the Bureau of Naturalization *"a duplicate"* of the *"Certificate of Citizenship."*

The charge made by this appellant in his accounts was not for a duplicate of the "Certificate of Citizenship."

The charge was for making a copy of the *"Declaration of Intention"* to become a citizen, which copy was made at the request of, and forwarded to, the Bureau of Naturalization.

There is no law specifically requiring the clerk of a United States Court to furnish a copy of the "Declaration of Intention" to any person, except the law which provides that the clerk shall properly perform his duties, a part of which is to furnish copies of records and papers on file in his office to any person requesting and paying for the same.

The copy of the "Declaration of Intention" forwarded to the Bureau of Naturalization is always prepared after the proceedings in each case are completed.

The charge made by this appellant of ten cents per folio for making said copy, is provided for under paragraph 9 of Sec. 828, R. S. U. S., which reads as follows:

> "For a copy of any entry or record, or of any paper on file, for each folio, ten cents."

The seal, for which this appellant made a charge of twenty cents for each of said copies, is charged for under paragraph 14 of Sec. 828, R. S. U. S., which reads as follows:

"For affixing the seal of the court to any instrument, when required, twenty cents."

Sec. 13 of the act approved June 29, 1906, provides fees as follows:

a. "For receiving and filing a declaration of intention and issuing a duplicate thereof, one dollar."

b. "For making, filing and docketing the petition of an alien for admission as a citizen of the United States, and for the final hearing thereon, two dollars."

c. "For entering the final order and issuing the certificate of citizenship thereunder, if granted, two dollars."

This claimant has made no charge for any fees which would conflict with the foregoing provisions, for the reason that he has charged for nothing except making a copy of a paper on file in his office.

Sec. 21 of the act referred to above provides:

"That it shall be unlawful for any clerk of any court, or his authorized deputy or assistant, exercising jurisdiction in naturalization proceedings, to demand, charge, collect, or receive, any other or additional fees or moneys in naturalization proceedings, save the fees and moneys herein specified; * * *."

The limitation of fees to be charged under Sec. 13 and the penalty provided under Sec. 21, for making other charges "in the naturalization proceedings" is for the

purpose of protecting the alien applicant from exorbitant charges which might be made by the clerk.

That section has no reference or application to the services performed, or fees charged by this appellant for making a copy of the "declaration of intention," for the simple reason that the making of said copy is in no way a part of the "proceedings" in any naturalization cause, said copy having been made and forwarded to the Bureau of Naturalization after the "proceedings" had terminated.

Sec. 12 of said law referred to above, requiring clerks of courts to forward to the Bureau of Naturalization a copy of each "Certificate of Citizenship," cannot be construed to apply to the services of a clerk of a court furnishing a copy of a "Declaration of Intention."

That section requiring the clerk to furnish to the Department a copy of the "Certificate of Naturalization" brings that service within the limitation of fees allowed to be charged.

It can hardly be contended that, after the proceedings in a naturalization case have terminated, and the clerk of a court makes a copy of the "Declaration of Intention" at the request of the Department, such service can be construed to be a part of the "proceedings" in a naturalization cause, for the reason that the proceedings had terminated before the service was performed, and the service consisted simply of making a copy of a paper on file, and furnished at the request of the Bureau of Naturalization, for which a charge was made of ten cents per folio, under Sec. 828 of the Revised Statutes of the United States.

SEAL WHEN REQUIRED

The declaration of intention made by an alien, after giving a brief description and history of the declarant, and indicating his bona fide intention to renounce forever all allegiance and fidelity to any foreign prince, potentate, etc., and "in good faith to become a citizen of the United States of America, and permanently to reside therein," is sworn to by the declarant before the clerk of the court, and to the declaration is affixed the seal of the court.

The Bureau of Naturalization ordering a copy of the declaration of intention, would necessarily require that the copy should have the seal affixed thereto.

It is well settled that when any duty is imposed on the clerk, who receives no salary but is compensated wholly by fees, he shall receive the fees provided in the Fee Table, Sec. 828, R. S. U. S.

(U. S. vs. McCandless, 147 U. S., 692.)

> "The law thus imposes the duties upon the clerk to make these reports, and fixes the compensation, and having made them, petitioner is entitled to the statutory fees."
>
> (Clough vs. U. S., 55 Fed. Rep., 921.)

> "The clerk is the only Federal officer of the court not paid in part by an annual salary from the Government. His compensation is limited and fixed by the Fee Bill. * * * There is no provision therein requiring the clerk to perform gratuitous services on behalf of the Government, nor would it be just that he be required to do so unless a small annual salary were given him as in

marshals' and district attorneys' cases. His relations with the Government in this respect, therefore, are exactly the same as with individuals. What services it requires of him, if they come legitimately within the terms of his schedule of fees in Sec. 828, R. S. U. S., and whether ordered by a department official or imposed by a statute, must be paid for according to that schedule."

(5 Federal Reporter, p. 440.)

The services charged for in the case at bar were performed by the order and at the request of the Department of Commerce and Labor, the rule being based upon that portion of Sec. 12 of the Statutes which provides, among other things:

> "It shall also be the duty of each clerk of said courts * * * to furnish to said bureau, * * * certified copies of such other proceedings and orders instituted in or issued out of said court, affecting or relating to the naturalization of aliens, as may be required from time to time by the said bureau."

The charges are claimed under Sec. 828 of the Revised Statutes, and the doctrine involved in asking compensation for the services performed is that set forth in the decisions above quoted, they being for copies of papers on file in the court, and are not in any way a part of the proceedings in a naturalization cause.

Respectfully submitted,

F. B. CROSTHWAITE,
Attorney for Appellant.

E. F. COLLADAY,
Of Counsel.

In the Supreme Court of the United States.

OCTOBER TERM, 1915.

WILLIAM P. CROSS, APPELLANT,
v.
THE UNITED STATES. } No. 389.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This is an appeal from the judgment of the Court of Claims dismissing the petition.

Appellant was clerk of the United States District Court for the District of Rhode Island from July 1, 1907, to October 1, 1912. During this period the accounting officers of the Treasury Department disallowed the following items:

For making, by direction of the Department of Commerce and Labor, triplicate copies of original declarations of intention for naturalization, 8,110 declarations, at 3 folios each, 24,330 folios, at 10 cents each	$2,433.00
For attaching seal as required by the Department of Commerce and Labor to each of 8,110 declarations, at 20 cents each	1,622.00
Total	4,055.00

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(Finding III, Rec. 6.)

Suit was later instituted in the Court of Claims for the recovery of the amount so disallowed.

The law governing the case is found in the act of June 29, 1906 (34 Stat., p. 596, c. 3592), as follows:

> "SEC. 12. That it is hereby made the duty of the clerk of each and every court exercising jurisdiction in naturalization matters under the provisions of this act to keep and file a duplicate of each declaration of intention made before him and to send to the Bureau of Immigration and Naturalization at Washington, within thirty days after the issuance of a certificate of citizenship, a duplicate of such certificate, and to make and keep on file in his office a stub for each certificate so issued by him, whereon shall be entered a memorandum of all the essential facts set forth in such certificate. It shall also be the duty of the clerk of each of said courts to report to the said Bureau, within thirty days after the final hearing and decision of the court, the name of each and every alien who shall be denied naturalization, and to furnish to said Bureau duplicates of all petitions within thirty days after the filing of the same, and certified copies of such other proceedings and orders instituted in or issued out of said court affecting or relating to the naturalization of aliens as may be required from time to time by the said bureau.
>
> "In case any such clerk or officer acting under his direction shall refuse or neglect to comply with any of the foregoing provisions

he shall forfeit and pay to the United States the sum of twenty-five dollars in each and every case in which such violation or omission occurs, and the amount of such forfeiture may be recovered by the United States in an action of debt against such clerk. * * *

"SEC. 13. That the clerk of each and every court exercising jurisdiction in naturalization cases shall charge, collect, and account for the following fees in each proceeding:

"For receiving and filing a declaration of intention and issuing a duplicate thereof, one dollar.

"For making, filing, and docketing the petition of an alien for admission as a citizen of the United States and for the final hearing thereon, two dollars; and for entering the final order and the issuance of the certificate of citizenship thereunder, if granted, two dollars. * * *

"SEC. 21. That it shall be unlawful for any clerk of any court or his authorized deputy or assistant exercising jurisdiction in naturalization proceedings to demand, charge, collect, or receive any other or additional fees or moneys in naturalization proceedings save the fees and moneys herein specified; and a violation of any of the provisions of this section or any part thereof is hereby declared to be a misdemeanor and shall be punished by imprisonment for not more than two years, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment."

ARGUMENT.

It is conceded that appellant has received all fees provided for in section 13 of the act of June 29, 1906. He contends, however, that the items disallowed are outside of the said act and should be allowed under section 828, Revised Statutes (app. brief, p. 9), which provides (par. 9):

> "For a copy of any entry or record, or of any paper on file, for each folio, ten cents."

Appellant's argument is that the duplicates requested were copies of papers on file in the court, and "not in any way a part of the proceedings in a naturalization cause." (Brief, p. 9.)

It would seem too obvious to require argument that paragraph 9 of section 828, Revised Statutes, can not be invoked here, for the reason that the same is excluded by that part of section 13 of the act of June 29, 1906, as follows:

> "It shall also be the duty of the clerk of each of said courts * * * to furnish to said bureau * * * *certified copies of such other proceedings and orders instituted in or issued out of said court affecting or relating to the naturalization of aliens as may be required from time to time by the said bureau.*"

The declaration of intention is certainly a "proceeding" in a "naturalization cause," and it would appear that the furnishing of certificates of the declaration of intention upon the request of the Bureau of Naturalization was simply the performance of a

duty prescribed by section 12 of the act of June 29, 1906.

By section 21 of said act appellant is prevented from demanding or receiving any additional fees in naturalization proceedings than those set forth in section 13.

Reference is hereby made to two decisions of the Comptroller of the Treasury—*Locke's case* (14 Comp. Dec., 222); *Mortimer's case* (15 Comp. Dec., 289).

The fees of public officers are dependent upon the provisions of the statute granting them and are not open to equitable construction by the courts or discretionary action on the part of officials. (*U. S.* v. *Shields*, 153 U. S., 88.) There not only being no fee provided for the service performed by this appellant, but being, as is believed, a positive prohibition in the law against his receiving any separate fee for this service, it is respectfully submitted that the decision of the lower court should be sustained.

HUSTON THOMPSON,
Assistant Attorney General.

○

CROSS *v.* UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 78. Submitted October 23, 1916.—Decided November 13, 1916.

Under the Naturalization Act of June 29, 1906, 34 Stat. 596, c. 3592, fees may not rightfully be charged against the United States by a clerk of a federal court for making triplicate copies of declarations of intention, or for attaching the seal of the court thereto, pursuant to the direction of the Bureau of Immigration and Naturalization.

The Naturalization Act, by the affirmative provisions of §§ 12 and 13 defining duties and fees, and by the express prohibition against additional charges, contained in § 21, precludes any right of the clerk which might otherwise exist under Revised Statutes, § 828, to charge fees against the United States for the services here in question.

50 Ct. Clms. 413, affirmed.

The case is stated in the opinion.

Mr. Frank B. Crosthwaite and *Mr. E. F. Colladay* for appellant.

Mr. Assistant Attorney General Thompson for the United States.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

The question for decision is, did the court below err in rejecting the claim of the plaintiff, who is the appellant,

to recover an amount based upon his asserted right as clerk of the United States District and Circuit Courts for the District of Rhode Island to be paid fees for making on the direction of the Bureau of Immigration and Naturalization triplicate copies of original declarations of intention for naturalization and attaching the seal of the court to the same?

The solution of the inquiry depends upon a consideration of §§ 12, 13 and 21 of the Naturalization Act of June 29, 1906, 34 Stat. 596, c. 3592, and the relation to those provisions of § 828, Rev. Stat.

By § 12 it is provided that it shall be the duty of the clerk of every court exercising jurisdiction in naturalization matters "to keep and file a duplicate of each declaration of intention made before him and to send to the Bureau of Immigration and Naturalization at Washington, within thirty days after the issuance of a certificate of citizenship, a duplicate of such certificate, and to make and keep on file in his office a stub for each certificate so issued by him. . . . It shall also be the duty of the clerk of each of said courts to report to the said Bureau, within thirty days after the final hearing and decision of the court, the name of each and every alien who shall be denied naturalization, and to furnish to said Bureau duplicates of all petitions within thirty days after the filing of the same, and certified copies of such other proceedings and orders instituted in or issued out of said court affecting or relating to the naturalization of aliens as may be required from time to time by the said Bureau."

By § 13 provision is made for the following fees: "For receiving and filing a declaration of intention and issuing a duplicate thereof, one dollar. For making, filing, and docketing the petition of an alien for admission as a citizen of the United States and for the final hearing thereon, two dollars; and for entering the final order and the issu-

ance of the certificate of citizenship thereunder, if granted, two dollars."

In their ultimate analysis all the arguments for reversal must come to one or the other or both of the following propositions: (a) That the declarations of intention were not proceedings in naturalization covered by § 12 and therefore the services rendered were outside of that section and governed, not by the enumeration of fees in § 13, but by the general provisions of § 828, Rev. Stat., authorizing a charge by clerks of ten cents per folio "for a copy of any entry or record, or of any paper on file" and a fee of twenty cents "for affixing the seal of the court to any instrument, when required." Or (b) if the declarations of intention of which triplicate copies were furnished were proceedings in naturalization and within the requirements of § 12, payment for such copies was not embraced by the fees enumerated in § 13 and therefore the charge for them must be considered as being provided for in § 828, Rev. Stat.

But we are of opinion that both of these propositions are incompatible with §§ 12 and 13 and moreover that to sanction them would disregard the express prohibition of § 21, which is as follows:

"That it shall be unlawful for any clerk of any court or his authorized deputy or assistant exercising jurisdiction in naturalization proceedings, to demand, charge, collect, or receive any other or additional fees or moneys in naturalization proceedings save the fees and moneys herein specified."

We are of opinion the conclusion stated clearly follows from the prohibition of this section for the following reasons: First, if on the one hand it be assumed that the duty to furnish the copies charged for was expressly commanded by § 12, the right to charge for them would be clearly prohibited by § 21 even if no provision for payment was embraced in the fees enumerated in § 13,

since it is apparent from the text that the purpose of the statute was to permit fees to be charged for the services expressly provided for in § 12 only when such fees were enumerated and authorized by § 13,—a conclusion which is additionally apparent since § 12 unmistakably imposes duties for which no fees are provided in § 13, but which are covered by the prohibition of § 21. Second: If on the other hand it be assumed that there is no express provision for furnishing the copies in § 12, but that such duty only arose in consequence of the general provision of that section requiring clerks to furnish "certified copies of such other proceedings and orders instituted in or issued out of said court affecting or relating to the naturalization of aliens as may be required from time to time by the said Bureau," it is equally clear that the prohibition of § 21 would be applicable, since it was plainly intended to prevent resort to extraneous legislation for the purpose of supporting the right to charge a fee for services embraced within the general terms of § 12 when no fee was provided for such services by § 13.

Affirmed.